1991

# Capitol Hill Neighborhood Council v. Purdue : Brief of Appellant

Utah Supreme Court


Bruce Plenk; attorney for respondents.
John Purdue, Beth Purdue; pro se.

BRIEF

John W. Purdue, Pro Se
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Salt Lake City, Utah 84102
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IN THE SUPREME COURT OF THE

STATE OF UTAH, SALT LAKE CITY

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|---|---|
| CAPITOL HILL NEIGHBORHOOD COUNCIL AND KEITH and DEBBIE WIDDISON, Plaintiffs, Respondents<br><br>Versus<br><br>JOHN PURDUE, Defendant, Appellant<br>and<br>BETH ROBERTS PURDUE, Appellant | BRIEF OF APPELLANT<br>Civil Case No. 910206 |

APPEAL FROM JUDGMENT FROM THIRD DISTRICT COURT,

CIVIL CASE NO. 890902814 BEFORE

HONORABLE MICHAEL R. MURPHY

Attorney for Plaintiffs-Respondents

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Attorney for Plaintiffs-Respondents
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Attorney for Defendant-Appellants

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## LIST OF PARTIES

Plaintiffs, Respondents

Capitol Hill Neighborhood Council, Inc.

Keith Widdison

Debbie Widdison

Defendant and Appellants

John W. Purdue, Defendant-Appellant

Beth Roberts Purdue, Appellant

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## TABLE OF AUTHORITIES

## JURISDICTIONAL STATEMENT

The Utah Supreme Court has jurisdiction of this matter pursuant to Utah Code Anno. 78-2-2(3), i, 1987.

## STATEMENT OF THE ISSUES AND STANDARD OF REVIEW

1. The default judgment awarded the Plaintiffs-Respondents by the Trial Court violated the due process clause ofthe United States Federal and the Utah State Constitutions in that it ordered demolition of property belonging to Beth Roberts Purdue when she had not been named as defendant in Plaintiffs-Respondents' complaint.

2. The Trial Court erred in refusing to allow Beth Purdue to be admitted as Defendant in a new trial on merits of the case.

3. The Trial Court erred in denying Defendant and Appellants a new trial on the merits, since failure of Defendant to appear at a second pretrial was excusable in that he mistakenly relied on words and action of Plaintiffs' counsel at the first pretrial leading Defendant to believe the second pretrial had been waived by Plaintiffs.

4. The Trial Court erred in permitting Plaintiffs' counsel to "correct" admitted errors in the complaint and in the default judgment when the errors as to parties, ownership, addresses, legal description, location and building ordered demolished were judicial, not "clerical" (i.e., mechanical) errors in transcrib-

ing, but involved factual and legal issues, correctable only through a new trial on the merits of the case itself.

5. The Trial Court erred in sustaining the Plaintiffs' "corrected" default judgment which did not, in fact, "correct" but compounded the "errors" of the original.

6. The Trial Court abused its discretion in refusing to set aside the default and to grant the parties a new trial on the merits since (1) the Defendant's failure to appear was excusable; (2) Defendant and Appellants had a meritorious defense; (3) judicial errors were involved in the demolition order; and (4) the Trial Court lacked jurisdiction over the owner of the property ordered demolished.

7. The demolition order should be vacated for reasons of public benefit. Defendant and Appellants' property is not dilapidated, dangerous or unsightly as alleged in the Plaintiffs' complaint. The property is, in fact, comparatively new, comfortable, modern, safe, attractive and eminently usable. Such housing is desperately needed by the community. A responsible humanitarian, nonprofit corporation has examined the property. Its officials found the buildings repairable, and have presented Defendant and Appellants with a bona fide offer to repair and manage same. This corporation will provide employment, supervision, on-the-job training, worthy incentives, and affordable housing for low-income and homeless citizens of the community who

have been neglected and discriminated against for too long already.

## CONSTITUTIONAL OR STATUTORY PROVISIONS

United States Constitution, Fifth Amendment:

> No person . . . shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation. Killian, Constitution of the United States of America, p. 1212.

United States Constitution, Fourteenth Amendment:

> No state shall make or enforce any law which shall . . . deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Killian, ibid., p. 1467.

Utah State Constitution, Article One, Section 7:

> No person shall be deprived of life, liberty or property without due process of law. Utah Code Anno., 1953, p. 64.

> "Due process of law" requires that, before one can be bound by a judgment affecting his property rights, some process must be served upon which . . . is calculated to give him notice. Naisbitt v. Herrick, 76 Utah 575 290 P950 (1930).

> Due process of law requires that notice be given to the person whose rights are to be affected. It hears before it condemns, proceeds upon inquiry, and renders judgment only after trial. Higgs v. District Court of Salt Lake County, 89 Utah 183, 51 P2d 645 (1935).

> The order of an administrative body issued without notice to affected individuals violates due process. Morris v. Public Service Commission, 7 Utah 167, 321 P2d 644 (1958).

Utah State Constitution, Section 22

> Private property shall not be taken or damaged for public use without just compensation. Utah Code Anno., 1953, p. 119.

## STATEMENT OF CASE

Defendant and Appellants seek voidance of default order of demolition of property or properties in the vicinity of 500 North and 300 West, in Salt Lake City, Utah.

### Disposition in Lower Court

Plaintiffs-Respondents obtained an ambiguous Default Judgment for demolition of Appellants' property or properties at 534 North 300 West, Salt Lake City, Utah. From verdict and default judgment in favor of the Plaintiffs-Respondents, the Appellants now appeal.

### Relief Sought on Appeal

Appellants seek reversal of the judgment, revocation of the demolition order, and judgment in Appellants' favor as a matter of law, or that failing, a new trial,

### Standard of Review

Defendant and Appellants state that the issues presented on appeal are as follows:

1. Default judgment was based on Plaintiffs-Respondents' errors of fact, fraud in jurisdictional matters, manipulation of

pretrial proceedings, misrepresentation of location of the property ordered demolished and the ownership thereof. The court erred in its refusal to hear an essential party, and in refusing to rehear the case on its merits despite good cause appearing.

Appellants ask that judgment be set aside in the interest of justice to them and for the benefit of low-income and homeless persons in the community whom appellants will be unable to serve if this building is demolished.

## STATEMENT OF FACTS

Plaintiffs-Respondents obtained a default judgment against John Purdue from the Third District Court dated on or about January 31, 1991, ordering the demolition of a building situated on the property of Appellant Beth Roberts Purdue at 534 North 300 West, Salt Lake City, Utah. Defendant John Purdue and Appellant Beth Purdue request the Utah State Supreme Court to vacate this order.

## SUMMARY OF THE ARGUMENT

1. The property ordered demolished, 534 North 300 West, Salt Lake City, Utah, is not now and was not, at the time the complaint was filed, owned by the party named as Defendant (John Purdue). It has since 1955 belonged to Beth Roberts (Purdue). See Addendum 2, 3, and 4.

2. The demolition order was obtained by default due to manipulation by the Plaintiffs-Respondents' attorney of pretrial procedures which led Defendant John Purdue to reasonably believe that further appearances prior to the trial would be fruitless, unnecessary, and had been waived by the Plaintiffs-Respondents.

3. No legal description or correct address of the subject property was given in the Plaintiffs-Respondents' complaint or in the demolition order, just the street address of 534 North 300 West, Salt Lake City, Utah, a property owned by Beth Purdue, who was not summoned or named as a party to the suit, though her name was surreptitiously added to the judgment and order by the Plaintiffs-Respondents' attorney after he had been awarded the default judgment and demolition order.

4. The District Court erred in granting a demolition order (by default) of a property belonging to Beth Purdue, who had not been brought under the jurisdiction of the court.

5. Appellants John Purdue and Beth Purdue filed a motion in the District Court as soon as they learned of the default judgment, asking to have it set aside and requesting a trial of the case on its merits. The court denied this motion but ordered the Plaintiffs-Respondents' attorney to correct what the judge called "clerical errors." Appellants contend that these errors were not "clerical" but judgmental and thus correctable only by a new hearing of the case on its merits. The "corrections" made by the

attorney on the judge's order served only to compound the errors and magnify the injustice of the ruling against the appellants.

6. The Plaintiffs-Respondents' errors pertaining to address, ownership of property, and the absence of a legal description of the property to be demolished go to the heart and essence of the case. These are not mere "clerical errors" but involve judgmental determinations. This case was never tried on its merits and the order should be vacated.

7. To demolish a viable, modern, comfortable, safe, sturdy low-rent housing facility at this time when shortage of affordable housing has driven hundreds into homelessness and has raised rents for all tenants in the area would be wasteful, inhumane and against public policy.

8. A responsible humanitarian nonprofit organization, "Family House, Inc.," is seeking to rehabilitate appellants' buildings to provide low-rent housing and to teach building and maintenance skills to the unemployed. A copy of their proposal is included in Appendix 4. This should satisfy any legitimate concerns of the Plaintiffs-Respondents concerning the condition of the property and its effect on the neighborhood.

## ARGUMENT

(1) The Court abused discretion by failing to vacate judgment ordering demolition of property belonging to Beth Roberts (Purdue), over whom the court had no jurisdiction.

As soon as Defendant John Purdue learned of the default judgment awarded to the Plaintiffs against both John and Beth Purdue, the Purdues promptly filed a Notice of Objection and a motion for a hearing asking for the default to be vacated and to have the demolition order revoked, or for a trial on the merits and inclusion of Beth Purdue as defendant since she had not been summoned or included in Plaintiffs' complaint but she claimed an interest in the property ordered demolished.

At the hearing on the motion, the judge refused to revoke the default judgment or to hear Beth Purdue or to listen to John Purdue's meritorious defense. The judge ordered plaintiff's attorney to remove Beth Purdue's name from the judgment and demolition order which he thereupon sustained.

Appellants contend this refusal to set aside the default and revoke the demolition order was an abuse of discretion in accordance with Rules of Civil Procedure, Rule 60 (b)(1). In a Utah case in 1969 this court held:

> It is ordinarily abuse of discretion to refuse to vacate a default judgment where there is reasonable justification or excuse for failure to appear and timely application is made to set it aside. Central Finance Company v. Kynaston, 452 P2d, 316 22, Utah 2d 284. See also Mayhew v. Standard Gelsonite 1962, 376 P2d 951-14, Utah 2d 5 2.
>
> Default judgments are not favored by the courts which are liberal in relieving parties of defaults

caused by inadvertence or excusable neglect and where doubt exists (ibid.).

Utah 1962. Default judgments are not favored by the courts nor are they in the interest of justice and fair play. Heathman v. Falican Ind Clendenin 377 P2d 189 14 Utah 2d.

Utah 1974. Generally, whenever interests of justice and fair play will be served thereby trial court should exercise its discretion liberally in favor and giving parties an opportunity for hearing on the merits of the case. Barber v. Calder, 522 P2d 700.

Utah (n.d.). Courts should exercise caution in regard to default judgments and should be somewhat indulgent in setting suth judgments aside. McKeon v. Mountain View Estates, Inc., 411 P2d, 129 17 Utah 2d 323.

Utah 1956. The default judgment should have been vacated in its entirety in accordance with Rule 60 of Utah Rules of Civil Procedure, Rule 60b(d). Kelly v. Scott, 298 P2d, 821 5 Utah 2d 159.

Utah 1963. Courts will generally grant relief from a default judgment in doubtful cases in order that defaulting parties may have a hearing. Board of Education of Granite School District v. Cox, 384 P2d 806 14 Utah 2d 385.

Utah (n.d.). On motion to vacate a default judgment discretion must be exercised in the furtherance of justice and the court will incline toward granting relief in a doubtful case so that party may have a hearing. Warren v. Dixon Ranch, 260 P2A, 741 13 Utah 416.

Utah 1955. In case of uncertainty, default judgments should be set aside to allow trial on merits. Locke v. Peterson, 285 P2d 1111 3 Utah 2d 415.

Utah 1956. Under usual circumstances it is inequitable and unjust to condemn a party unheard; doubts should be resolved in favor of setting aside default judgment to permit parties to have their day in court. Rules of Civil Procedure, Rule 60(b). Chrysler v. Chrysler 303 P2d 995 5 Utah 2d 415.

Other states have ruled similarly:

Nevada 1961. In general, the party who has good defense should, when prompt application to vacate default judgment is made, be allowed to set it up notwithstanding any negligence of himself or counsel. Blakeney v. Freemont Hotel, Inc., 360 P2d 1039 77 Nev. 191.

Nevada 1966. Defaulting actions of one defendant cannot be imputed to another who behaves properly. Doyle v. Jorgensen, 414 P2d 707 82 Nev 196.

Kansas 1975. General principles cannot justify denying the parties their day in court except upon a serious showing of willful default. Vickers v. Kansas City, 531 P2d 113216 Kan 84.

Arizona 1967. Default judgments are not favored. Ramada Inns v. Lane Bird Advertising, Inc., 426 P2d 395, 102 Ariz. 127.

Arizona 1967. Judgment entered by default without notice against party timely answering is void. McClintock v. Serv us Bakers, 423 P2d 722 5 Ariz. App.

California 1957. The policy of the law is to allow a controversy to be tried and determined on its merits. Beckley v. Reclamation Board of State of California, 312 P2d 109848c 2d 710.

Hawaii 1962. Defendant who had filed an answer and thus appeared in action had right to notice of application by plaintiff for default judgment even if defendant who did not appear at preconference was in default. Rules of Civil Procedure, Rule 55(b)(2). Stafford v. Dickison, 374 P2d 665 Haw 52.

Oklahoma 1975. Default judgments are never viewed with favor. Burroughs v. Bob Martin Corp., 536 P2d 339.

Washington (n.d.). Grounds for vacating a default judgment are excusable neglect or fraud practiced by prevailing party. Bishop v. Illman, 126 P2d 582 14 Wash 2d 13.

Washington 1960. It is the policy of the law that controversies be settled on the merits rather than by

default. Dlouhy v. Dlouhy, 349 P2d 1074 55 Wash 2d 718.

Wyoming 1964. Judgments by default are not favored. Westring v. Cheyenne National Bank, 393 P2d 824, 63 Wyo 375; Lake v. Lake, 182 P2d 824, 119 63 Wyo.

Wyoming 1964. Purpose of rule (60b) governing vacation of default judgments is to provide courts with means of relieving party from oppression of final judgment or order on proper showing where such judgments are unfairly or mistakenly entered (ibid.).

(2) The trial court erred in ordering the plaintiff to amend the default judgment to correct "clerical errors" which were in fact judicial errors.

These corrections as to address, location, ownership, and legal description of the property, proper parties to the suit, and the property ordered demolished go to the heart and essence of the case, and involve judgmental errors made by the Plaintiffs-Respondents in their complaint and in the default judgment awarded by the court.

These are not "clerical errors" made by a typist but judgmental errors correctable only by a new trial of the case on its merits. The Plaintiffs-Respondents' so-called "corrections" only further compounded the confusion and injustice of the default judgment.

A "clerical error" is one made by a clerk in transcribing or otherwise, and, of course, must be apparent on the face of the record, and capable of being corrected by reference to the record only. Froth v. Birmingham Ry., Light and Power Co., 39 So 716, 717 144 Ala. 383.

A judicial error may not be corrected by trial court under the guise of rectifying a "clerical error." Carpenter v. Pacific Mutual Life Ins. Co. of California, 96 P2d 796-799, 14 Cal. 2dM4.

A clerical error, as its designation imports, is an error of a clerk or a subordinate officer in transcribing or entering an official proceeding ordered by another. Marsh v. Nichols Shepard and Co., 9 S Ct. 168, 171, 128 US 605 2d L Ed 538.

Errors into which the court itself falls are "judicial errors." An error of this character occurs when the judgment rendered is erroneous in some particular, requiring it to be changed. It is not a mere "clerical error" but one affecting the substance and justice of the judgment. Connecticut Mortgage and Title Guarantee Co. v. De Francesco, 151a 491, 492, 112 Conn 673.

"Clerical mistake" includes only errors or mistakes arising from accidental slip or omission, and not errors or mistakes in the substance of what is decided by judgment or order. Town of Hialeah Gardens v. Hendry, Fla. 376 So 2d 1162 1164.

"Clerical errors" which Trial Court may correct more than 30 days after judgment do not include judicial errors, rule permitting correction of clerical errors may not be used to enter judgment different from judgment actually made, even if judgment made was not judgment intended. Hassler v. State Mo. App. 789 SW 2d 1 32, 1 33.

Error in judgment or order may be corrected as "clerical mistake" only where error does not involve any judgment or discretion of the court. Matter of American Precision Vibrator Co. C.9-5 (Tex) 863 F2d 428-430.

A "clerical error" for which relief will be granted from a judgment is an error made by clerk in transcribing or otherwise. West Virginia Oil and Gas Co. v. Breece Lumber Co., CA La 213 F 2d 702, 705.

Where plaintiff seeking to foreclose mortgage stipulated that only those properties listed in exhibit were being foreclosed, mistake in description as to one parcel was not a "clerical mistake" which would permit trial court to amend judgment. Foster v. Knutson, 516 P2d 786, 787, 10 Wash App 175.

> "Clerical mistakes" correctable under rule refer to type of error identified with mistakes in transmission, alteration or omission of a mechanical nature. . . . If pronouncement reflects a deliberate choice on the part of the court, the act is judicial, and errors of this nature are to be cured by appeal. Spomer v. Spomer, Wyo 580 P2d 1146-1149.

(3) Demolition of the subject property would be needless, wasteful and against public interest and humanitarian concerns.

There is a critical shortage of affordable housing hereabout, resulting in homelessness for hundreds of low-income persons. If not destroyed, this building can, should and will be immediately rehabilitated to replenish the community's dwindling low-rent housing supply.

Appellants are eager and able to restore and reoccupy their properties. They submit as an exhibit to this brief (Addendum 8) an offer from Family House, Inc., to lease a building at 535-537 Arctic Court, Salt Lake City, Utah, which will be extended to an offer to lease the property in question, 534 North 300 West, together with the following properties (all in Salt Lake City, Utah): 542 North 300 West, 515 Arctic Court, 242-244 West 500 North, and 554-556 North 300 West. All of these properties have been referred to over the years in sequence by Appellants as Bob's Motel Annex, in the order of their acquisition. Such restorations would provide at least 60 desperately needed low-rent housing units.

These leases are contingent upon vacation of this confusing and ambiguous demolition order. If appeal results in removing

this jeopardy, the would-be lessors, Family House, Inc., will effectuate a program where they employ licensed contractors to take out permits and to direct, train, and supervise the talents and labor of unemployed and homeless persons. These persons then participate in the restoration and maintenance of the units they will occupy at low rent thereafter.

This program provides employment, on-the-job training, and incentives as well as desperately needed housing. The organization is presently rehabilitating a 14-unit property known as 338 North 300 West in Salt Lake City, Utah, two blocks from Appellants' property. It is a humanitarian, nonprofit and proven program which deserves the support and encouragement of all volunteer and paid social workers, community improvement agencies and advocates of the poor such as Plaintiffs-Respondents' attorney, Bruce Plenk, and the Capitol Hill Neighborhood Council he represents.

The rehabilitation of lives and properties and neighborhoods which this program provides is a far more worthy objective than the creation of more weed-filled vacant lots, which would be the tragic, irreversible and only possible result if this demolition order is not vacated by this court.

## CONCLUSION

The judicial errors involved in the default judgment granted to the Plaintiffs-Respondents and the confusion regarding which

property is involved, and the ownership thereof, together with the failure of the plaintiff to bring an essential party under the jurisdiction of the court should dictate that this default judgment be vacated.

Precedent, legal theory, statutes, plus beneficient public policy and simple justice all support Defendant and Appellants' plea. After filing their complaint, Plaintiffs-Respondents let this ill-conceived lawsuit lay dormant for 18 months until threatened with dismissal for failure to prosecute. If demolition were to result from this judgment, no one would benefit, not even the plaintiffs. The appellants would suffer grievous economic and financial loss. The community would lose valuable housing and tax base, and the homeless would be deprived of a way out of their hopeless misery and misfortune.

Wherefore, the appellants pray the court to set aside this default judgment and prevent the demolition of Appellant's property.

Signature of parties:

John Purdue

John Purdue, Defendant-Appellant

Beth Roberts Purdue

Beth Roberts (Purdue), Appellant

PROOF OF SERVICE

The undersigned certifies that on the 7th day of January, 1992, a true and correct copy of the foregoing was served by mailing postpaid to Bruce Plenk, Attorney for Plaintiffs-Respondents, 124 South 400 East, 4th Floor, Salt Lake City, UT 84111.

John Pardue

## LIST OF ADDENDA

1. Affidavit of John Purdue regarding excusable nonappearance at second pretrial "mediation" conference, January 3, 1991.

2. Warranty deed showing ownership of property in the name of Beth Roberts since 1955.

3 and 4. Printout from Salt Lake County tax rolls (1991) showing properties at 534 North 300 West (Salt Lake City), still vested in Beth Roberts (Purdue).

5. Notice of entry of judgment ordering demolition of property belonging to Beth Purdue (534 North 300 West, Salt Lake City, Utah), also showing plaintiff's surreptitious inclusion of Beth Purdue's name on the judgment though she was not included or summoned as defendant when complaint was filed.

6. Plaintiff's notice of readiness for trial showing only John Purdue as party to the proceeding.

7. Proposal for demolition of Beth Purdue's property at 534 North 300 West, Salt Lake City, by Northern Nevada Construction Company, prepared by John Henry on order of Bruce Plenk.

8. Residential lease offer from Family House, Inc., to lease, rehabilitate and occupy property at 535 North Arctic Court, Salt Lake City, Utah.

ADDENDUM 1

AFFIDAVIT OF JOHN PURDUE

Regarding defendant's nonappearance at pretrial mediation hearing Janury 3, 1991, defendant John Purdue gives the following explanation.

Early in 1989, Plaintiffs-Respondents filed this suit. I, John Purdue, the only defendant summoned or named in the complaint, responded timely by filing pro se an answer to the complaint.

Thereafter, the Plaintiffs-Respondents let the case lie dormant for 18 months. Then in September 1990, after the court threatened to dismiss the case for plaintiffs' failure to prosecute, attorney Plenk filed a Notice of Readiness for Trial and scheduled a pretrial conference for November 14, 1990. On that date I appeared at the scheduled time in Judge Murphy's court.

Plaintiffs' attorney, Bruce Plenk, did not arrive at the appointed time. The judge did not appear at any time. After waiting almost an hour in the empty courtroom, I consulted with the court clerk as to whether or not I should leave. The clerk telephoned Mr. Plenk at his office. I waited another 30 minutes before Mr. Plenk arrived.

Upon his arrival, Mr. Plenk went directly to the clerk. The two of them had a private conversation from which I was

excluded. Then Mr. Plenk left the courtroom. I followed him into the corridor to learn what was to happen next and when.

I had expected this pretrial conference would deal with scheduling and that my wishes would be consulted.

It was important that I be consulted, for it was advisable that we be in Arizona and Nevada between the November pretrial and the trial date scheduled for February. I was not consulted in regard to any further pretrials.

Nothing about scheduling was mentioned by Mr. Plenk but we became involved in a heated discussion concerning why Mr. Plenk was recklessly seeking to demolish sturdy, viable, modern low-rent housing when Mr. Plenk professes to be an advocate of the poor and homeless.

During the discussion it became obvious, and Mr. Plenk stated to me that further negotiation or mediation efforts would be futile. This corresponded with what Mr. Plenk had stated on September 20, 1990, in his Certificate of Readiness for Trial, paragraph (4):

> That reasonable discussions to effect settlement have been pursued by counsel and their clients but no settlement has been effected..

Consequently, I logically, reasonably and naturally assumed no further conferences would occur prior to the trial already scheduled for February 1991. I was thus unaware of and was thus dissuaded from being present at the second pretrial hearing (January 3, 1991) held while I was

out of state at which the plaintiff obtained by default the order to demolish the property belonging to my wife, Beth Roberts (Purdue), located at 534 North 300 West, Salt Lake City, Utah.

John W. Purdue
Defendant-Appellant

1434597

Recorded at Request of TRACY-COLLINS TRUST CO. JUL 1 1955

at 8:07 M. Fee Paid $1.30 HAZEL TAGGART CHASE, RECORDER, SALT LAKE COUNTY, UTAH

By M Matheson Dep. Book 1214 Page 106 Ref.:

Mail tax notice to Address

# WARRANTY DEED

DOROTHY G. GARCIA, grantor

of Salt Lake City, County of Salt Lake, State of Utah, hereby

CONVEY and WARRANT to

BETH ROBERTS, also known as BETH ALENE ROBERTS

grantee

of Salt Lake City County Salt Lake, State of Utah

for the sum of TEN AND NO/100 - - - - - - ($10.00) - - - - - - - - - - DOLLARS,
and other good and valuable consideration

the following described tract of land in Salt Lake County,

State of Utah, to-wit:

BEGINNING at the Southwest corner of Lot 5, Block 132, Plat "A", Salt Lake City Survey, and running thence North 44.44 feet; thence East 165 feet; thence South 44.44 feet; thence West 165 feet to the place of beginning.

Subject to any and all general taxes and special assessments levied or assessed, due or to become due after December 31st, 1954.

WITNESS the hand of said grantor, this 30th day of June A. D. 19 55

Signed in the presence of

M. Farrell Carter

Dorothy G. Garcia

STATE OF UTAH,
County of Salt Lake } ss.

On the 30 day of June A. D., 19 55 personally appeared before me DOROTHY G. GARCIA

the signer of the within instrument who duly acknowledged to me that she executed the same.

M. Farrell Carter
Notary Public

My Commission expires Sept 21 1957 My residence is Salt Lake City, Utah

NOTARY PUBLIC - STATE OF UTAH - SALT LAKE COUNTY - MY COMMISSION EXPIRES SEPT. 21, 1957

THIS DEED PRINTED ESPECIALLY FOR PHOTO RECORDING, USE BLACK INK AND TYPE.

Blank No. 101—Kelly Co., 22 West 1st South, Salt Lake City

C 32 219

C 42 203

1214 106

I 08-36-205-007-0000 DIST 01 TOTAL ACRES 0.17
ERTS, BETH PRINT U UPDATE REAL ESTATE 29400
LEGAL BUILDINGS 28000
TAX CLASS NE MOTOR VEHIC 0
7 E SOUTHTEMPLE ST EDIT 1 BATCH NO 0 TOTAL VALUE 57400
, UT 841021641 BATCH SEQ 0
: 534 N 300 W EDIT 1 BOOK 0000 PAGE 0000 DATE 00/00/00
: TYPE UNKN PLAT

P R O P E R T Y D E S C R I P T I O N

COM AT SW COR LOT 5 BLK 132 PLAT A SLC SUR N 44.44 FT E 10 RDS S 44.44 FT W 10 RDS TO BEG

DI 08-36-205-008-0000  DIST 01
BERTS, BETH A.
77 E SOUTHTEMPLE ST
:, UT
:: 534 N 300 W
:

PRINT  U  UPDATE
LEGAL
TAX CLASS NE
EDIT 1
BATCH NO  0
841021641
BATCH SEQ  0
EDIT 1  BOOK 0000  PAGE 0000  DATE 00/00/00
TYPE UNKN PLAT

| | |
|---|---|
| TOTAL ACRES | 0.27 |
| REAL ESTATE | 20300 |
| BUILDINGS | 10000 |
| MOTOR VEHIC | 0 |
| TOTAL VALUE | 30300 |

P R O P E R T Y  D E S C R I P T I O N

COM AT NW COR LOT 4 BLK 132 PLAT A SLC SUR S 70 FT E 10 RDS
N 70 FT W 10 RDS TO BEG

UTAH LEGAL SERVICES, INC.
Attorneys for Plaintiffs
By: BRUCE PLENK #2613
124 South 400 East, Fourth Floor
Salt Lake City, Utah 84111
Telephone: (801) 328-8891

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH
240 East 400 South, Salt Lake City, Utah 84111

| | |
|---|---|
| CAPITOL HILL NEIGHBORHOOD COUNCIL, INC., a non-profit Corporation, and KEITH AND DEBBIE WIDDISON, Plaintiffs, | NOTICE OF ENTRY OF JUDGMENT |
| vs. | Civil No. 890902814 |
| JOHN AND BETH PURDUE, Defendants. | Judge Michael R. Murphy |

Pursuant to Rule 58A(d) of the Utah Rules of Civil Procedure, all parties are hereby notified that on the 31st day of January, 1991, a Default Judgment against defendants was entered by the Court ordering the building located at 534 North 300 West, Salt Lake City, Utah be demolished on or before May 15, 1991. If defendants fail to comply with this order, plaintiffs are awarded judgment in the amount of $4,400 plus demolition permit fees and any other costs to be placed in trust with plaintiffs' attorney to be used solely for paying the costs of demolition.

DATED this 5th day of February, 1991.

UTAH LEGAL SERVICES, INC.
Attorneys for Plaintiffs

BY: BRUCE PLENK

UTAH LEGAL SERVICES, INC.
Attorneys for Plaintiff
BY: BRUCE PLENK, #2613
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Telephone: (801) 328-8891

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

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| CAPITOL HILL NEIGHBORHOOD COUNCIL, INC., a non-profit Corporation, and KEITH AND DEBBIE WIDDISON,<br><br>Plaintiffs,<br><br>vs.<br><br>JOHN PURDUE,<br><br>Defendant. | * | CERTIFICATE OF READINESS FOR TRIAL<br><br>Civil No. 890902814<br><br>Judge Michael R. Murphy |

TO THE DISTRICT COURT:

Utah Legal Services, Inc., by Bruce Plenk, attorney for Plaintiffs, by his signature below here certifies that in his judgment this case is ready for trial and in support of such certification counsel represents to the Court as follows:

1. That all required pleadings have been filed and the case is at issue as to all parties.

2. That counsel has completed all discovery; and that all discovery of record has been completed.

3. That there are no motions that have been filed which remain pending and upon which no disposition has been made.

4. That reasonable discussions to effect settlement have been pursued by counsel and their clients but no settlement has been effected.

5. Non-jury trial is demanded.

Counsel further certifies that the following were mailed correct copies of this certificate:

John Purdue
1177 East South Temple
Salt Lake City, Utah 84102

DATED this 19th day of September, 1990.

UTAH LEGAL SERVICES, INC.
Attorneys for Plaintiffs

By: BRUCE PLENK

[a:capitol.cer NAP]

*Expert Demolition & Excavation*
350 W. Hartwell • Salt Lake City, Utah 84115 • (801) 485-6655

# Proposal

| | | |
|---|---|---|
| OPOSAL SUBMITTED TO: Bruce Plenk - Utah Legal Services | PHONE 328-8891 | DATE 1-18-91 |
| REET 124 S 400 E | JOB NAME BLDG DEMO | |
| TY, STATE AND ZIP CODE SLC, Ut 84111 | JOB LOCATION 534 N 300 W SLC | |

e hereby propose to furnish materials and labor necessary for the completion of:

Demolish & remove building - fill to existing grade

★ Sewers will be capped at edge of building.
★ Buried debris that is not structurally related to building(s) mentioned herein will be removed at additional cost.
★ Extra work will be performed when a price has been agreed upon by both the owner & ourselves.

**WE PROPOSE** hereby to furnish material and labor — complete in accordance with above specifications, for the sum of:

forty-four hundred exactly ——— dollars ($) 4400 ea

Utah State Law requires payment to be made within 30 days of completion of work.

All material is guaranteed to be as specified. All work to be completed in a substantial workmanlike manner according to specifications submitted, per standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owners to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Authorized Signature: Jim Kenny

Note: This proposal may be withdrawn by us if not accepted within 60 days.

**ACCEPTANCE OF PROPOSAL** The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

P.O. Box 17193
Salt Lake City, Utah 84117

Residential — Commercial
Total Property Management

# RESIDENTIAL LEASE

## Apartment - Condominium - House

BY THIS AGREEMENT made and entered into on 26 Dec , 1991
between , herein referred to as Lessor,
and Family House INC , herein referred to as Lessee,
Lessor leases to Lessee the premises situated at 537 N. ARTIC
SALT LAKE County of SL
larly described as

, together with all appurtenances, for a term of ONE years, to commence on
1 Feb , 1992, and to end on 31 JAN , 1993

**1. Rent.** Lessee agrees to pay, without demand, to Lessor as rent for the demised premises the sum of
Per unit Dollars
($ 100 ) per month in advance on the 1 ST day of each calendar month beginning
1 Feb , 1992. Payments are to be made by money order, certified check or cash. Personal checks are not acceptable. STARTING AS SOON AS EACH UNIT IS OCCUPIED BY TENANT

**2. Security Deposit.** On execution of this lease, Lessee deposits with Lessor
Dollars
($ 100 00 ), receipt of which is acknowledged by Lessor, as security for the faithful performance by Lessee of the terms hereof, to be returned to Lessee, without interest, on the full and faithful performance by him of the provisions hereof.

**3. Quiet Enjoyment.** Lessor covenants that on paying the rent and performing the covenants herein contained, Lessee shall peacefully and quietly have, hold, and enjoy the demised premises for the agreed term.

**4. Use of Premises.** The demised premises shall be used and occupied by Lessee exclusively as a private single family residence, and neither the premises nor any part thereof shall be used at any time during the term of this lease by Lessee for the purpose of carrying on any business, profession, or trade of any kind, or for any purpose other than as a private single family residence. Lessee shall comply with all the sanitary laws, ordinances, rules, and orders of appropriate governmental authorities affecting the cleanliness, occupancy, and preservation of the demised premises, and the sidewalks connected thereto, during the term of this lease.

**5. Number of Occupants.** Lessee agrees that the demised premises shall be occupied by no more than N/A persons, consisting of adults and N/A children under the age of years, without the written consent of Lessor.

**6. Condition of Premises.** Lessee stipulates that he has examined the demised premises, including the grounds and all buildings and improvements, and that they are. accepted "as is" unless exceptions are noted on page 3 of this contract.

**7. Assignment and Subletting.** Without the prior written consent of Lessor, Lessee shall not assign this lease, or sublet or grant any concession or licence to use the premises or any part thereof. A consent by Lessor to one assignment, subletting, concession, or license shall not be deemed to be a consent to any subsequent assignment, subletting, concession, or license. An assignment, subletting, concession, or license without the prior written consent of Lessor, or an assignment or subletting by operation of law, shall be void and shall, at Lessor's option, terminate this lease.

**8. Alterations and Improvements.** Lessee shall make no alterations to the buildings on the demised premises or construct any building or make other improvements on the demised premises without the prior written consent of Lessor. All alterations, changes, and improvements built, constructed, or placed on the demised premises by Lessee, with the exception of fixtures removable without damage to the premises and movable personal property, shall, unless otherwise provided by written agreement between Lessor and Lessee, be the property of Lessor and remain on the demised premises at the expiration or sooner termination of this lease.

**9. Damage to Premises.** If the demised premises, or any part thereof, shall be partially damaged by fire or other casualty not due to Lessee's negligence or willful act or that of his employee, family, agent, or visitor, the premises shall be promptly repaired by Lessor and there shall be an abatement of rent corresponding with the time during which, and the extent to which, the leased premises may have been untenantable; but, if the leased premises should be damaged other than by Lessee's negligence or willful act or that of his employee, family, agent, or visitor to the extent that Lessor shall decide not to rebuild or repair, the term of this lease shall end and the rent shall be prorated up to the time of the damage.

Subject TO FINAL Approval
family House BOARD of Directors

thing of a dangerous, inflammable, or explosive character that might unreasonably increase the danger of fire on the leased premises or that might be considered hazardous or extra hazardous by any responsible insurance company.

**11. Utilities.** Lessee shall be responsible for arranging for and paying for all utility services required on the premises, except that NONE shall be provided by Lessor.

**12. Maintenance and Repair.** Lessee will, at his sole expense, keep and maintain the leased premises and appurtenances in good and sanitary condition and repair during the term of this lease and any renewal thereof. In particular, Lessee shall keep the fixtures in the house or on or about the leased premises in good order and repair; keep the furnace clean; keep the electric bells in order; keep the walks free from dirt and debris; and, at his sole expense, shall make all required repairs to the plumbing, range, heating, apparatus, and electric and gas fixtures whenever damage thereto shall have resulted from Lessee's misuse, waste, or neglect or that of his employee, family, agent, or visitor. Major maintenance and repair of the leased premises, not due to Lessee's misuse, waste, or neglect or that of his employee, family, agent, or visitor, shall be the responsibility of Lessor or his assigns. - LANDLORD TO PROVIDE ALL MATERIAL TO MAKE ALL ORIGINAL REPAIRS

Lessee agrees that no signs shall be placed or painting done on or about the leased premises by Lessee or at his direction without the prior written consent of Lessor.

**13. Animals.** Lessee shall keep no domestic or other animals on or about the leased premises without the written consent of Lessor.

**14. Right of Inspection.** Lessor and his agents shall have the right at all reasonable times during the term of this lease and any renewal thereof to enter the demised premises for the purpose of inspecting the premises and all building and improvements thereon.

**15. Display of Signs.** During the last 30 days of this lease, Lessor or his agent shall have the privilege of displaying the usual "For Sale" or "For Rent" or "Vacancy" signs on the demised premises and of showing the property to prospective purchasers or tenants.

**16. Subordination of Lease.** This lease and Lessee's leasehold interest hereunder are and shall be subject, subordinate, and inferior to any liens or encumbrances now or hereafter placed on the demised premises by Lessor, all advances made under any such liens or encumbrances, the interest payable on any such liens or encumbrances, and any and all renewals or extensions of such liens or encumbrances.

**17. Holdover by Lessee.** Should Lessee remain in possession of the demised premises with the consent of Lessor after the natural expiration of this lease, a new month-to-month tenancy shall be created between Lessor and Lessee which shall be subject to all the terms and conditions hereof but shall be terminated on days' written notice served by either Lessor or Lessee on the other party.

**18. Surrender of Premises.** At the expiration of the lease term, Lessee shall quit and surrender the premises hereby demised in as good state and condition as they were at the commencement of this lease, reasonable use and wear thereof and damages by the elements excepted.

**19. Default.** If any default is made in the payment of rent, or any part thereof, at the times hereinbefore specified, or if any default is made in the performance of or compliance with any other term or condition hereof, the lease, at the option of Lessor, shall terminate and be forfeited, and Lessor may re-enter the premises and remove all persons therefrom. Lessee shall be given written notice of any default or breach, and termination and forfeiture of the lease shall not result if, within 5 days of receipt of such notice, Lessee has corrected the default or breach or has taken action reasonably likely to effect such correction within a reasonable time.

**20. Abandonment.** If at any time during the term of this lease Lessee abandons the demised premises or any part thereof, Lessor may, at his option, enter the demised premises by any means without being liable for any prosecution therefor, and without becoming liable to Lessee for damages or for any payment of any kind whatever, and may, at his discretion, as agent for Lessee, relet the demised premises, or any part thereof, for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such reletting, and, at Lessor's option, hold Lessee liable for any difference between the rent that would have been pyable under this lease during the balance of the unexpired term, if this lease had continued in force, and the net rent for such period realized by Lessor by means of such reletting. If Lessor's right of re-entry is exercised following abandonment of the premises by Lessee, then Lessor may consider any personal property belonging to Lessee and left on the premises to also have been abandoned, in which case Lessor may dispose of all such personal property in any manner Lessor shall deem proper and is hereby relieved of all liability for doing so.

**21. Binding Effect.** The covenants and conditions herein contained shall apply to and bind the heirs, legal representatives, and assigns of the parties hereto, and all covenants are to be construed as conditions of this lease.

**22. Other Terms:**

Other terms noted on page 3 of this contract. T.R. PROPERTY SHALL RECEIVE A 9% MGN FEE. WITH A $30.00 PER MONTH MINIMUM.

IN WITNESS WHEREOF, the parties have executed this lease at , the day and year first above written.

Subject to final Approval of Family Louse Board of Directors

Lessor

Lessee